IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 582 OF 2007.

Smt.Sulochana Balasaheb Boraste & ors. ... Appellants.

Versus.

Ashok Gotiram Boraste & others. ... Respondents.

Shri S.M.Sabrad for the Appellants.

Shri M.S.Karnik for the Respondents Nos.1, 2 and 7.

CORAM : ABHAY S.OKA, J.

DATED : 19th November, 2007.

P.C.:

1. Heard the Advocates appearing for the parties. The Appellants are some of the original Defendants. A decree for partition and separate possession passed by the trial Court has been confirmed in Appeal preferred by the Appellants before the District Court.

2. The learned Advocate appearing for the Appellants placing reliance on a decision of the Apex court in the case of D.S.Lakshmaiah and another v/s. L.Balasubramanyam and another, [{2003} 10 SCC 310] submitted that as the original Plaintiffs did not discharge the burden, the Court below could not have found fault with the Appellants on the ground that the Appellants have failed to prove that the suit properties were self acquired properties of late Balasaheb. He submitted that the revenue entries have been set aside by the Appellate authority.

3. I have carefully considered the submissions. There are concurrent findings of fact recorded by both the Courts below that the suit properties are joint family properties. Reliance has been placed on the revenue entries and the entries regarding house tax assessment for considerably long period which disclose that the property was of joint ownership of the original Plaintiffs and the Defendant. In the context of the oral and documentary evidence on record, the Courts below especially the Appellate Court has held that the burden shifted on the Appellants to show that the suit properties were purchased by the deceased Balasaheb from his own earnings. The finding of fact is that no evidence was led to show that the properties were acquired by Balasaheb and that he was having independent source of income during his lifetime.

4. In view of the concurrent finding of fact no substantial question of law arises. The Second Appeal is accordingly dismissed.

Judge.